

09/890569

Practitioner's Docket No. 604.14-US1

## CHAPTER II

## Preliminary Classification:

Proposed Class:

Subclass:

**TRANSMITTAL LETTER  
TO THE UNITED STATES ELECTED OFFICE (EO/US)  
(ENTRY INTO U.S. NATIONAL PHASE UNDER CHAPTER II)**

PCT/US99/23816	12 October 1999 (12.10.99)	None
International Application Number	International Filing Date	International Earliest Priority Date

TITLE OF INVENTION: VIRTUAL PROSPECTING USING E-COMMERICALS

APPLICANT(S): BLAKELEY, Thomas; MCEWAN, Richard; and BRIOLA, Michael

**Box PCT****Assistant Commissioner for Patents****Washington D.C. 20231****ATTENTION: EO/US****CERTIFICATION UNDER 37 C.F.R. SECTION 1.10\****(Express Mail label number is mandatory.)**(Express Mail certification is optional.)*

I hereby certify that this paper, along with any document referred to, is being deposited with the United States Postal Service on this date July 30, 2001, in an envelope as "Express Mail Post Office to Addressee," mailing Label Number EL717614996US, addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231.

  
Kristin J. Azcona

**WARNING:** *Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. Section 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.*

**\*WARNING:** *Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. Section 1.10(b).  
"Since the filing of correspondence under [Section] 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.*

JC06 Rec'd PCT/PTO 3 1 JUL 2001

1. Applicant herewith submits to the United States Elected Office (EO/US) the following items under 35 U.S.C. Section 371:

- a. This express request to immediately begin national examination procedures (35 U.S.C. Section 371(f)).
- b. The U.S. National Fee (35 U.S.C. Section 371(c)(1)) and other fees (37 C.F.R. Section 1.492) as indicated below:

2. Fees

CLAIMS FEE*	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
	TOTAL CLAIMS	12 -20 =	0	x \$18.00 =	\$0.00
	INDEPENDENT CLAIMS	1 -3 =	0	x \$80.00 =	\$0.00
	MULTIPLE DEPENDENT CLAIM(S) (if applicable) + \$270.00				\$0.00
BASIC FEE	U.S. PTO WAS INTERNATIONAL PRELIMINARY EXAMINATION AUTHORITY Where an International preliminary examination fee as set forth in Section 1.482 has been paid on the international application to the U.S. PTO: and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness) and industrial activity, as defined in PCT Article 33(2) to (4) have been satisfied for all the claims presented in the application entering the national stage (37 C.F.R. Section 1.492(a)(4)) ..... \$100.00				\$100.00
	Total of above Calculations				= \$100.00
SMALL ENTITY	Reduction by 1/2 for filing by small entity, if applicable. Affidavit must be filed. (note 37 CFR Sections 1.9, 1.27, 1.28)				- \$50.00
	Subtotal				\$50.00
	Total National Fee				\$50.00
	Fee for recording the enclosed assignment document \$40.00 (37 C.F.R. Section 1.21(h)). See attached "ASSIGNMENT COVER SHEET".				\$0.00
TOTAL	Total Fees enclosed				\$50.00

\*See attached Preliminary Amendment Reducing the Number of Claims.

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JC05 Rec'd PCT/PTO 31 JUL 2001

A check in the amount of \$50.00 to cover the above fees is enclosed.

3. A copy of the International application as filed (35 U.S.C. Section 371(c)(2)) is not required, as the application was filed with the United States Receiving Office.
4. A translation of the International application into the English language (35 U.S.C. Section 371(c)(2)) is not required as the application was filed in English.
5. Amendments to the claims of the International application under PCT Article 19 (35 U.S.C. Section 371(c)(3)) are transmitted herewith.
6. A translation of the amendments to the claims under PCT Article 19 (38 U.S.C. Section 371(c)(3)) is not required as the amendments were made in the English language.
7. A copy of the international examination report (PCT/IPEA/409) is not required as the application was filed with the United States Receiving Office.
8. Annex(es) to the international preliminary examination report is/are not required as the application was filed with the United States Receiving Office.
9. A translation of the annexes to the international preliminary examination report is not required as the annexes are in the English language.
10. An oath or declaration of the inventor (35 U.S.C. Section 371(c)(4)) complying with 35 U.S.C. Section 115 is submitted herewith, and such oath or declaration is attached to the application.
- II. Other document(s) or information included:
11. An International Search Report (PCT/ISA/210) or Declaration under PCT Article 17(2)(a) is not required, as the application was searched by the United States International Searching Authority.
12. An Information Disclosure Statement under 37 C.F.R. Sections 1.97 and 1.98 will be transmitted within THREE MONTHS of the date of submission of requirements under 35 U.S.C. Section 371(c).
13. Additional documents:
- a. Copy of request (PCT/RO/101)
  - b. International Publication No. WO01/27859  
Front page only
  - c. Preliminary amendment (37 C.F.R. Section 1.121)

14. The above items are being transmitted before 30 months from any claimed priority date.

#### AUTHORIZATION TO CHARGE ADDITIONAL FEES

The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the entire pendency of this application to Account No.: 500341

37 C.F.R. Section 1.492(a)(1), (2), (3), and (4) (filing fees)

37 C.F.R. Section 1.492(b), (c), and (d) (presentation of extra claims)

37 C.F.R. Section 1.17 (application processing fees)

37 C.F.R. Section 1.17(a)(1)-(5) (extension fees pursuant to Section 1.136(a))

Date: July 30, 2001



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231

Inventor: McEwan, et al.

Serial No: U.S. National Phase of  
PCT/US99/23816

Filed: October 12, 1999

For: Virtual Prospecting Using  
E-Commercials

Examiner: Not Yet Assigned

Art Unit: Not Yet Assigned

**PRELIMINARY AMENDMENT**

The Honorable Commissioner  
of Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

Please enter the following as a preliminary amendment.

**Remarks**

The IPEA/US Office considered 1-6, 8, and 12 to be obvious over Logan et al. (US Patent 5721827) in view of Wachob (US Patent 5155591), and claims 7, and 9-11 to be obvious over Logan et al. and Wachob in view of Bushnell (US Patent 4071697). The applicant respectfully disagrees for the reasons stated below.

- A prima facie case of obviousness has not been established.
- Performing a step manually is not obvious when an automated method is available.
- It is non-obvious to include a manual step in a large scale distribution system even if there is a system failure.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings (MPEP §2142). Additionally, the prior art reference (or references when combined) must teach or suggest all the claim limitations (MPEP §2142).

All of the references fail to provide suggestion or motivation to include “manually selecting an individual prospect and an individual commercial”. Additionally, there is no suggestion or motivation in the knowledge generally available to one of ordinary skill in the art to modify any of the references to include a manual selection step. In fact, general knowledge would lead the person of ordinary skill away from a manual step, because it is presumably less efficient, more costly, and more time consuming. Since there is no suggestion or motivation to modify the references, and the claimed references either by themselves or in combination do not teach or suggest all of the claimed limitations, a prima facie case of obviousness has not been established.

Performing a step manually is non-obvious when an automated method is available. The person of ordinary skill is imputed with the general knowledge available in the art as of the priority date of the inventive subject matter. Here, that knowledge includes the preference of automated systems and methods over manual systems and methods, especially when sending out advertising. While it may be obvious to automate a manual operation because of speed, efficiency, and cost, among other things, it is counterintuitive, and non-obvious, to take an automated operation and make it manual when the automated method is available.

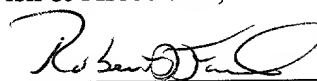
It is not obvious to include a manual step in a large-scale distribution system, even if there is a system failure. All of the references are large-scale distribution systems that would be too difficult and costly to operate manually in the case of system failure. One of ordinary skill in the art would be more inclined to have other less burdensome alternatives at hand, such as a backup system that would still perform the process in an automated fashion. Attempting to incorporate manual operation in a reference teaching large-scale distribution is analogous to cutting a lawn with a scissors just because your lawnmower is broken – there are other much better alternatives, and manual operation is not one of them.

**Request For Allowance**

Claims 1-12 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,  
Fish & Associates, LLP

Dated: 7/30/01

By:   
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**VIRTUAL PROSPECTING USING E-COMMERICALS****Field of the Invention**

The field of the invention is electronic direct marketing.

**Summary of the Invention**

5       Methods and systems of virtual prospecting are provided in which an advertiser narrowly selects prospects and commercials, identifies them to a third party, and the third party communicates the commercials to the prospects, tracks the response, and reports the tracking information to the advertiser.

10       It is preferred that the advertiser selects the prospect from a prospect list, and selects the commercial from a commercials database. It is also preferred that the commercial is an executable file that includes an identification code. The commercials may also advantageously include a hyperlink to a web site, and initiate a substantially synchronous link such as a telephone call or chat room exchange between the prospect and the advertiser. The step of reporting back to the advertiser preferably includes providing the advertiser with a sorting of  
15       prospects by action taken.

20       Various objects, features, aspects and advantages of the present invention will become more apparent from the following detailed description of preferred embodiments of the invention, along with the accompanying drawings in which like numerals represent like components.

**Brief Description of The Drawings**

Fig. 1 is a schematic of a soliciting phase of an embodiment of a virtual prospecting system and method according to the inventive subject matter.

25       Fig. 2 is a schematic of a responding phase of an embodiment of the virtual prospecting system and method of Fig. 1.



**Detailed Description**

Figures 1 and 2 provide an overview of a preferred method and system. In the soliciting phase of **Figure 1**, an advertiser 10 individually selects both a prospect from a prospect list 22 and a commercial from a commercial list 24, and identifies those selections to a third party 30. The third party 30 then communicates the commercial to the prospect 40. In the response phase of **Figure 2**, the prospect 40 responds to the communicated commercial, such as by linking to a web site 50 that communicates back to the advertiser 10. Responses of the prospect 40 are also tracked by the third party, which provides information relating to the tracking back to the advertiser 10.

While Figures 1 and 2 cooperate to illustrate different aspects of a preferred embodiment, it should be understood that a great number of alternatives are possible. In Figures 1 and 2, for example, the advertiser 10 is depicted as having a main office 12, and a plurality of agents 13-16, which may comprise any combination of branch offices, divisions, inside or outside salespeople, independent contractors, distributors, and so forth. In alternative embodiments, there may be any other structures having any other level of complexity. Thus, towards one extreme an advertiser may comprise a very large company with thousands of agents. At another extreme the entire advertiser may comprise only a single person. It is also contemplated that the advertiser may be more or less loosely organized. For example, the various agents may all be rigidly connected to a single mainframe in a local area network, they may be linked by a virtual private network, or they may be linked only in the sense that they can access common data. It should thus be understood that references to an advertiser performing an action may be interpreted as an agent for the advertiser performing that action.

At least one agent operates in some manner to select a prospect from a prospects database 22 and a commercial from a commercials database 24. In this example the accessing agent in this example is agent 14, and the data is accessed using links 14A and 14B. While not explicitly shown on the drawing, the databases 22, 24 are most likely stored on the advertiser's local area network (LAN), and accessed by the agent 14 using a common workstation, laptop, or other computer. Other combinations are contemplated, however, and it should be appreciated that the

databases 22, 24 could be stored or accessed by CD ROM or some other means, and that other agents or combinations of agents could cooperate to access the databases 22, 24.

It is significant, however, that the selection of prospects is performed on a narrowly selected basis. As defined herein, "narrowly selected" means that the agent 14 is not selecting an entire mailing list of thousands or even hundreds of names, but is selecting either an individual prospect or a very small number of prospects, defined herein to be less than 100 at a time.

The prospects database 22 may be entirely proprietary to the advertiser 10, or the agent, or may be obtained from an outside source. It is also contemplated that the prospects database 22 may comprise some or all of a co-sponsorship database as described in concurrently filed application serial no. \_\_\_\_ corresponding to attorney docket 604.16, which is incorporated herein by reference.

Typically the individuals being targeted would have answered a commercial, or telephoned for information on a product or service, or for some other reason have appeared on a contact list for the agent. Since the agent wants to maximize the value of his or her prospecting time, he chooses to send out a commercial to the prospects on his or her list to discover which are still interested, or based on some other characteristic, which of the prospects are considered to be qualified prospects.

In some instances there may be only a single commercial listed on the commercials database 24, but in most instances there will be a plurality of commercials. In any event the agent would usually select which commercial to send to individual prospects based upon some additional information. For example, the agent may understand that a given prospect falls within a particular age or income range, or is a particular sex, and the selection of commercial to send to that prospect may be made on that basis. It is also contemplated that an agent may select more than one commercial for a given prospect.

With current technology the commercials on the commercials database 24 are very likely to be canned commercials that differ from one another by language, content, medium or in some other manner. It is contemplated, however, that the commercials can be dynamically customized to the prospect as set forth in concurrently filed application serial number \_\_\_\_ corresponding to attorney docket 604.10, which is incorporated herein by reference.

The term "commercial" is used herein in a very broad sense to mean any message intending to motivate a recipient to take an action favorable to an advertiser. Commercials

may be simple textual banner ads, but more preferably include rich-media graphics such as animation, a photograph or other image, or an audio tract. Still more preferred commercials include video and branding graphics. Especially preferred commercials will be those that communicate a value proposition communicated in 30 seconds or less. Currently the most preferred commercials include an audio tract, a video tract, branding graphics, and hyperlinks, all delivered in a single executable file. These and other embodiments are as described in concurrently filed application serial nos. \_\_\_\_ and \_\_\_\_, corresponding to attorney docket 604.07 and 604.08, respectively which are incorporated herein by reference. Still other preferred embodiments include "slide-show" commercials as described in concurrently filed application serial no. \_\_\_\_ corresponding to attorney docket 604.09, which is incorporated herein by reference.

The term "advertisers" is used herein in the broadest possible sense, including any entity trying to impact the thinking or behavior of others. In many instances the desired impact will include motivating the recipient to purchase goods or services. In other instances the desired impact may be to cause the recipient to vote in a given manner in an election, or a poll. In still other instances the desired impact may be of a very general nature, perhaps increasing societal awareness of alcoholism.

A major advantage of electronic direct marketing is that it lends itself readily cross branding. An advertisement for vacation trips to the Bahamas may include logos for a fast food chain, or swim wear, or even television shows dealing with travel. Not only does a single message provide impression for each of the multiple marketers, but the inclusion of multiple, well-recognized brands may lend credibility to a new brand, or may lend a certain image of modernity to an older brand.

The narrow selection of prospects and commercials is communicated to a third party as shown by arrows 122, 124, respectively. This communication preferably takes place electronically via a public access network such as the Internet, but may additionally or alternatively take place by any suitable method. Thus, it is contemplated that the narrow selection of prospects and commercials may be communicated by telephone, or facsimile.

The third party is preferably a high volume electronic mailing company, sending out perhaps hundreds of thousands or even millions of messages per month. An exemplary such company is ecommercial.com, Inc. based in Southern California, USA. The third party may

or may not take part in initially producing the commercials, and may or may not take part in customizing the commercials. The third party would almost certainly charge for its services, most likely on an incremental basis as a function of the number of messages communicated to prospects, the length of the commercials, and so on. Because of the high traffic involved, the third party may advantageously employ outbound trafficking technologies such as those described in concurrently filed application serial nos. \_\_\_\_, corresponding to attorney dockets 604.12, 604.18, 604.19, and 604.20, each of which is incorporated herein by reference.

Communication of the narrowly selected commercial(s) to the narrowly selected prospect(s) also preferably takes place electronically via a public access network such as the Internet, arrow 130, but may additionally or alternatively take place by any suitable method. It is, for example, contemplated that such communication may take place, at least for some prospects, by e-mail, facsimile, or even physically carried postal type mail.

Turning now in greater detail to the response phase of **Figure 2**, the prospect 40 responds to the communicated commercial in some manner. Where the commercial was delivered electronically by e-mail, it is expected that the prospect may respond using some electronic means, such as return e-mail, or perhaps by clicking through a hyperlink on the commercial to a web site 50, as depicted by arrow 240A. The web site 50 may or may not belong to the advertiser, and may or may not even be hosted by the advertiser. At the web site 50 the prospect 40 may provide identifying information such as a name or account number, or may simply browse the web site 50. Either way it is contemplated that some tracking information can be obtained from actions of the prospect at the web site 50, and that tracking information can be communicated to the originating agent 14 or some other agent, as depicted by arrow 250.

In a more sophisticated case, the third party may include a unique identification code in one or more commercials delivered to a prospect, and that code can be employed to track click throughs, forwarding, opening and playing of the commercial, and so forth. The commercial may also be authenticated. Details of preferred embodiments of such tracking, including descriptions of identification codes and securing of commercials, are described in concurrently filed application serial no. \_\_\_\_ corresponding to attorney docket 604.07, which is incorporated herein by reference.

A response may also occur through some medium other than that used to deliver the commercial. One simple example is where the commercial motivates the prospect to physically visit a retail store or other outlet to make a purchase. Regardless of how the prospect responds, the third party obtains at least some tracking information as depicted by  
5 arrow 240B. In possibly the least valuable case involving e-mail delivery of a commercial, the third party can at least tell whether the commercial was in fact delivered to the prospect, and if the e-mail was opened.

One particularly advantageous method of responding involves the prospect engaging an icon, button, or other trigger that sends a message back to either the originating agent or  
10 some other agent. The message may, for example, ask that the agent call the prospect on the telephone, or send additional information. A system that provides such phone response tracking is Instantcall™. As another example, the message may open a chat room type dialog between prospect and agent, such as that provided by Eyecontact™. Such responses are highly desirable because they initiate a substantially synchronous link between the prospect  
15 and the agent.

The third party will most likely tabulate or in some other manner summarize the tracking information, and provide that information back to the initiating agent 14 or some other agent. Here again this communication most preferably occurs across a public access network such as the Internet, as depicted by arrow 230. One particularly valuable type of  
20 information that can be provided to the agent is a sorting of prospects by action. Such sortings allow the agent to allocate his or her time more efficiently, by prioritizing or taking different steps with respect to prospects as a function of the actions taken by the prospects.

As should now be apparent, a significant advantage to the above-described methods and systems is that they allow sales and marketing people to rapidly distinguish among  
25 suspects, prospects, qualified prospects, and intenders. This should be especially beneficial to insurance companies, health care providers, and other entities that market by on winnowing down multiple leads to focus on qualified prospects.

Thus, specific embodiments and applications of virtual prospecting have been disclosed. It should be apparent, however, to those skilled in the art that many more  
30 modifications besides those already described are possible without departing from the inventive concepts herein. The inventive subject matter, therefore, is not to be restricted

5

## CLAIMS

What is claimed is:

1. A method of virtual prospecting comprising;  
an advertiser manually selecting an individual prospect and an individual  
commercial, and identifying the selection to a third party;  
the third party electronically communicating the commercial to the prospect;  
the prospect making a response to the commercial;  
the third party tracking the response; and  
the third party reporting back to the advertiser with information relating to the  
response to the commercial.
2. The method of claim 1 wherein the step of narrowly selecting a prospect comprises  
the advertiser selecting the prospect from a prospect list.
3. The method of claim 1 wherein the step of narrowly selecting includes the  
advertiser selecting the commercial from a list of available commercials.
4. The method of claim 1 wherein the commercial is an executable file.
5. The method of claim 1 wherein the commercial includes an identification code.
6. The method of claim 1 wherein the commercial is communicated to the prospect as  
an attachment to an e-mail.
7. The method of claim 1 wherein the commercial includes a hyperlink to a web site.
8. The method of claim 1 wherein the step of tracking includes determining whether a  
commercial is opened.
9. The method of claim 1 wherein the step of tracking includes initiating a  
substantially synchronous link between the prospect and the agent.

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10. The method of claim 9 wherein the substantially synchronous link comprises a telephone call.
11. The method of claim 9 wherein the substantially synchronous link comprises a chat site.
12. The method of claim 1 wherein the step of reporting back includes providing the advertiser with a sorting of prospects by action.



FIG. 1

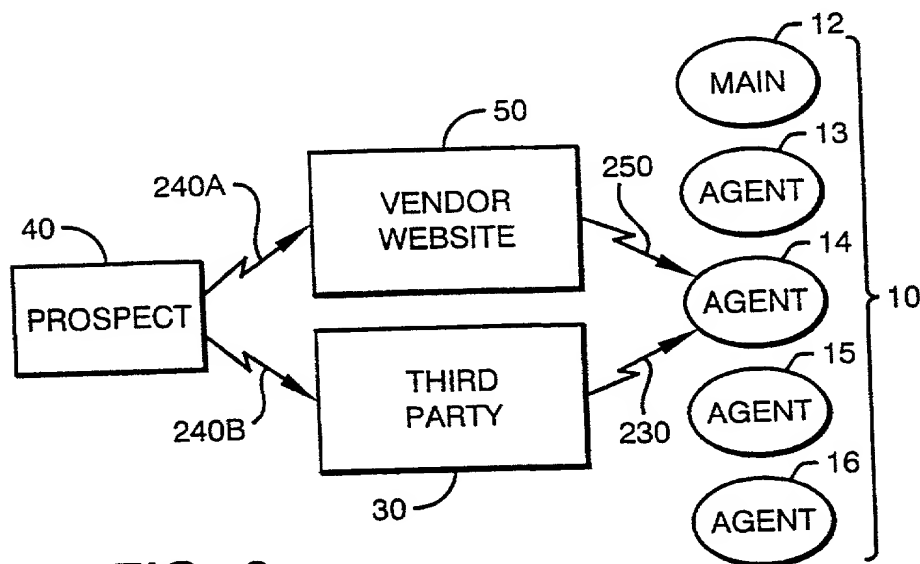
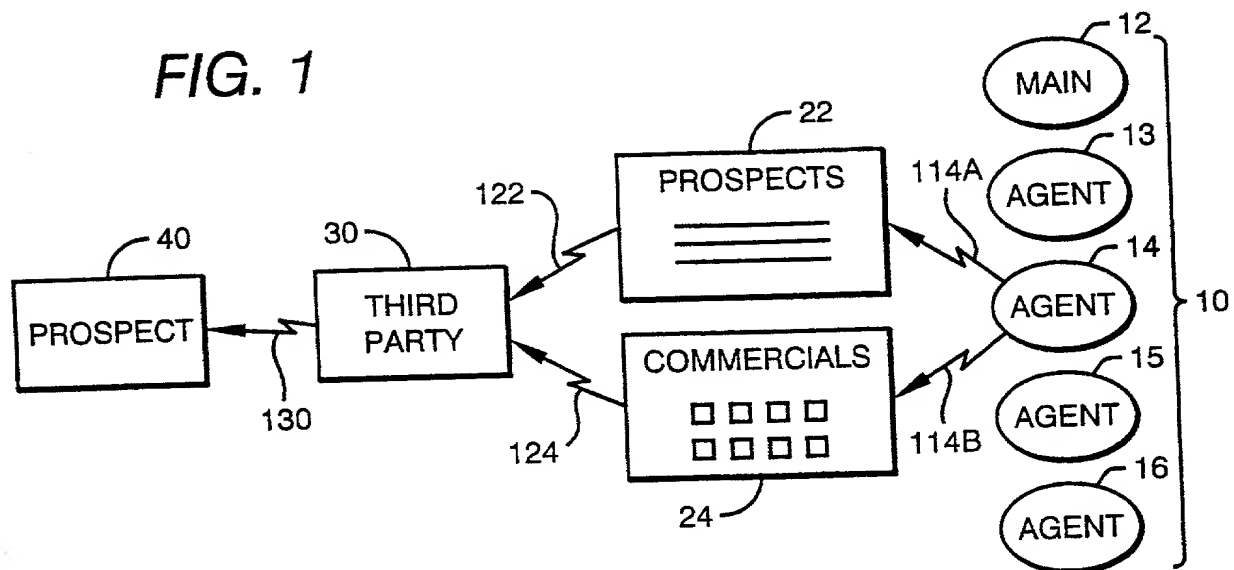


FIG. 2

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**COMBINED DECLARATION AND POWER OF ATTORNEY**

**(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,  
CONTINUATION, OR C-I-P)**

---

As a below named inventor, I hereby declare that:

**TYPE OF DECLARATION**

This declaration is for a national stage of PCT application.

**INVENTORSHIP IDENTIFICATION**

My residence, post office address and citizenship are as stated below, next to my name. I believe that I am an original, first and joint inventor of the subject matter that is claimed, and for which a patent is sought on the invention entitled:

**TITLE OF INVENTION**

VIRTUAL PROSPECTING USING E-COMMERCE

**SPECIFICATION IDENTIFICATION**

The specification was described and claimed in PCT International Application No. PCT/US99/23816 filed on October 12, 1999.

**ACKNOWLEDGMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information, which is material to patentability as defined in 37, Code of Federal Regulations, Section 1.56, and which is material to the examination of this application, namely, information where there is a substantial likelihood that a reasonable Examiner would consider it important in deciding whether to allow the application to issue as a patent.

**PRIORITY CLAIM (35 U.S.C. Section 119(a)-(d))**

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d) of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also

identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

Such applications have been filed as follows.

**PRIOR PCT APPLICATION(S) FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION  
AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. SECTION 119(a)-(d)**

INDICATE IF PCT	APPLICATION NUMBER	DATE OF FILING DAY, MONTH, YEAR	PRIORITY CLAIMED UNDER 35 U.S.C. SECTION 119
PCT	PCT/US99/23816	12 October 1999	Yes

**POWER OF ATTORNEY**

I hereby appoint the following practitioner(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

**APPOINTED PRACTITIONER(S)**

**REGISTRATION NUMBER(S)**

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33880

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I hereby appoint the practitioner(s) associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

**SEND CORRESPONDENCE TO**

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DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE(S)

100  
Thomas BLAKELEY

Inventor's signature

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